

INDIANAPOLIS DEPARTMENT OF WATERWORKS  
BOARD OF DIRECTORS

RESOLUTION NO. 13, 2005

RESOLUTION APPROVAL OF LANDSCAPING AGREEMENT

WHEREAS, the Broad Ripple Village Association Inc., an Indiana non-profit corporation (the "BRVA") desires to conduct landscaping activities including, but not limited to, grass cutting, tree and shrub trimming, vegetation removal and planting ("Landscaping") on that certain City of Indianapolis, Department of Waterworks property located near the central canal White River water conveyance ("Central Canal"), as forth on Exhibit A attached hereto and incorporated herein by reference (the Agreement");

WHEREAS, the Board of Directors (the "Board") recognizes the public benefit of the Agreement as a way to maintain and aesthetically improve Department property without expense to the Department;

WHEREAS, the Department's staff has determined it is in the best interests for the Department for the Board to authorize the Agreement; and

NOW, THEREFORE, BE IT RESOLVED by the Board that it hereby approves the Agreement.

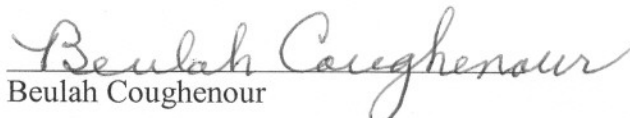
BE IT FURTHER RESOLVED by the Board that the Director of Contracts and Operations of the Department, the Controller's Office and the Office of Corporation Counsel, jointly or singly as appropriate, are hereby authorized and directed: (i) to prepare, execute and deliver each and every other document, certificate, instrument, agreement or affidavit as may be necessary, convenient or proper to effectuate the intent and purposes of the Agreement, as appropriate; (ii) to prepare, execute and deliver each and every document, certificate, instrument, agreement or affidavit as may be necessary, convenient or proper to effectuate the intent and purposes of these resolutions, as appropriate; and (iii) to take any and all such additional action as may be necessary, convenient or proper to effectuate the intent and purposes of these resolutions.

BE IT FURTHER RESOLVED by the Board that it ratifies any and all actions of the Director of Contracts and Operations, the Controller's Office and the Office of Corporation Counsel previously undertaken as may have been necessary, convenient or proper to effectuate the intent and purposes of these resolutions.

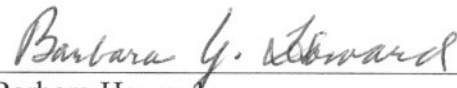
ADOPTED during a meeting of the Board, this 24<sup>th</sup> day of March, 2005.

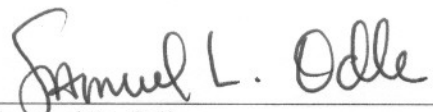
**INDIANAPOLIS DEPARTMENT OF WATERWORKS  
BOARD OF DIRECTORS**

  
\_\_\_\_\_  
Jack Bayt

  
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Beulah Coughenour


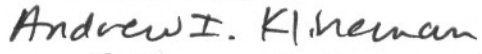
  
\_\_\_\_\_  
Carmen Hansen-Rivera

  
\_\_\_\_\_  
Barbara Howard

  
\_\_\_\_\_  
Samuel L. Odle

\_\_\_\_\_  
Dan DeMars

Attest:

  
~~S. Michael Hudson,~~   
~~Secretary-Treasurer~~ General Counsel

## AGREEMENT

This agreement ("Agreement") entered into this \_\_\_\_ day of \_\_\_\_\_, 2005 ("Effective Date"), by and between \_\_\_\_\_ with its principal office located at \_\_\_\_\_ ("Vendor"), and the BROAD RIPPLE VILLAGE ASSOCIATION INC., an Indiana non-profit corporation with its principal office located at PO Box 30361, Indianapolis, Indiana 46230 ("BRVA") (Vendor and BRVA are sometimes collectively referred to herein as the "Indemnitors"), and the CONSOLIDATED CITY OF INDIANAPOLIS, DEPARTMENT OF WATERWORKS with its office at the care of Office of the Corporation Counsel, City of Indianapolis, City-County Building, 200 East Washington Street, Indianapolis, Indiana 46204 (the "Indemnitee" or "Department").

### W I T N E S S E T H That:

WHEREAS, Indemnitors desire to conduct landscaping activities including, but not limited to, grass cutting, tree and shrub trimming, vegetation removal and planting ("Landscaping") on that certain Department property located near the central canal White River water conveyance ("Central Canal"), set forth on Exhibit A attached hereto and incorporated herein by reference in Marion County, Indianapolis, Indiana (the "Department Property"); and

WHEREAS, Indemnitee intends to allow Indemnitors to conduct the Landscaping pursuant to the terms and conditions of this Agreement; and

WHEREAS, in order to induce Indemnitee to allow to Indemnitors to conduct the Landscaping, Indemnitors, jointly and severally, intend to indemnify Indemnitee pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein and the actions to be performed hereunder, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Use of Department Property. The Department hereby grants to the Indemnitors the right to conduct the Landscaping on the Department Property. Indemnitors agree to consult with representatives of the Department's contract operator, Veolia Water Indianapolis, LLC ("VWI Representative") and the City of Indianapolis, Department of Parks and Recreation ("DPR Representative"), prior to commencing any of the Landscaping. The Indemnitors acknowledge that the VWI Representative and the DPR Representative shall have the authority to withhold access to the Department Property for the Landscaping until a plan, including appropriate renderings, lists of vegetation to be planted and removed and any signage (the "Landscaping Plan"), is approved by the VWI Representative and DPR Representative. At any time during the Landscaping, the Department, the VWI Representative and the DPR Representative have the right to

inspect the Landscaping and should the Department, VWI Representative or the DPR Representative determine that the Landscaping is not being or has not been conducted according the Landscaping Plan, the Indemnitors agree, under the direction of the Department, to restore in whole or in part, at the Indemnitors' sole cost and expense, the Department Property to its physical appearance maintained prior to Indemnitors conducting the Landscaping. The Indemnitors acknowledge that the primary purpose of the Central Canal is a raw water conveyance and that the Department, in its sole discretion, may deny, with or without cause, the Indemnitors access to the Department Property at any time and if necessary, may terminate this agreement, upon written notice, to the BRVA. Such restoration, in whole or in part, based upon the Indemnitors failure to follow the Landscaping Plan or earlier termination by the Department, shall occur within two (2) weeks of notice from the VWI Representative, DPR Representative or the Department. The Indemnitors acknowledge that they shall be responsible for the maintenance of the Department Property. All alterations, changes, and improvements built, constructed, placed or planted in the Department Property consistent with the Landscaping Plan by the Indemnitors, with the exception of objects removable without damage to the Department Property and movable personal property, shall, unless otherwise provided by written agreement between the Department and the BRVA, shall be the property of Department and remain in or on the Department Property at end of the Term, as defined herein, or the earlier termination of this Agreement. The Department, its contractor, agents, successors or assigns shall not be responsible for damage to the Landscaping or Department Property resulting from the Department, DPR Representative or VWI Representative denying the Indemnitors' access to the Department Property or planned or unplanned maintenance of the Central Canal or other Department facility or property. Under no circumstances does the Department, City of Indianapolis, Department of Parks and Recreation ("DPR") or DRP Greenways have a duty to maintain, restore or repair the Landscaping.

2. Term. This Agreement shall be for a period of two years from the Effective Date (the "Term"), unless otherwise earlier terminated. Any earlier termination is effective upon the date of its sending.

3. Consents. The Indemnitors, jointly and severally, represent and warrant to the Department the Indemnitors have obtained all of the requisite permits, consents, and licenses (collectively, the "Consents") to conduct the Landscaping and that such permits, certification, and licenses are in full force and effect. Indemnitors agree that they are solely responsible for obtaining and maintaining the Consents in full force and effect.

4. No Public Nuisance. Indemnitors represent and warrant that the Landscaping and the operation thereof shall not create a nuisance.

5. Indemnification and Disclaimer. Indemnitors, jointly and severally, hereby agree to indemnify and hold harmless the Department and all of its officers, executives, directors, agents, employees, and representatives from and against any and all claim or threat of claim, cost, loss, damage, expenses, including attorneys' fees, liability, judgment or lien arising out of or in connection with the Landscaping, including but not limited to,

property damage, noise, bodily harm and death. Neither the Department nor its contractors nor any of their respective owners, directors, officers, employees, agents, contractors or suppliers, makes any representations or warranties, express or implied, regarding the Department Property including, but not limited to, the availability, suitability, reliability, capability, usefulness, environmental suitability or fitness of the Department Property soil for any general or particular purpose.

6. Entire Agreement; Amendment. This Agreement constitutes the entire contract between the parties hereto and shall supersede and take the place of any other document and prior written and oral understanding purporting to be an agreement of the parties hereto relating to the actions contemplated herein. This Agreement may be amended or modified only by a written agreement executed by all of the parties to this Agreement.

7. Assignment. The parties agree that neither party shall subcontract, assign or delegate any portion of this Agreement or the services to be performed hereunder without prior written approval of the other.

8. Counterparts. This Agreement may be executed in separate counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

“Department”

**DEPARTMENT OF WATERWORKS,  
CONSOLIDATED CITY OF INDIANAPOLIS**

By: \_\_\_\_\_  
Carlton E. Curry, Director of Contracts  
and Operations

“Vendor”

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_

“BRVA”

**BROAD RIPPLE VILLAGE ASSOCIATION INC.,**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Printed Name: \_\_\_\_\_